No. 07-704

FILED
DEC 21 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

PASTOR LARRY MARTIN,

Petitioner,

v.

SALVADOR GODINEZ, as Executive Director of the Cook County Department of Corrections, THOMAS DART, as Cook County Sheriff, and JUDGE KATHLEEN M. PANTLE, Judge of the Circuit Court of Cook County,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM T. BARKER
Counsel of Record
DAVID R. GEERDES
SONNENSCHEIN NATH & ROSENTHAL LLP
233 South Wacker Dr., Ste. 7800
Chicago, Illinois 60606
(312) 876-8000

Attorneys for the Plaintiffs (Prevailing Parties) in Marsaw v. Richards, *No. 01 CH 16442 (Cir. Ct. Cook County)*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction to review a denial of a motion for leave to file a motion for *habeas corpus* when the petitioner has subsequently been released from jail and purged of contempt and fines.

2. Whether this Court has jurisdiction to review a state supreme court's order denying a motion for leave to seek an original writ of *habeas corpus* when the record does not indicate any federal question was presented or decided, the movant chose not to take an appeal of right, and state law provides that an original writ is discretionary extraordinary relief.

3. Whether *habeas corpus* with respect to a contempt sanction may be used to make a collateral attack on the underlying judgment when direct appeals from the underlying judgment have been exhausted and an attempted petition for certiorari regarding that judgment was untimely.

4. Whether a civil court may incarcerate a nonparty for civil contempt of court when the nonparty was acting in active concert with parties to the action and had actual notice of the order.

LIST OF PARTIES TO THE PROCEEDING BELOW

Pursuant to U.S. Supreme Court Rule 12.6, Plaintiffs in *Marsaw, et al. v. Richards, et al.*, No. 01 CH 16442 (Cir. Ct. Cook County) (the "Marsaw Group") are also parties in this underlying matter. In addition to the parties listed in the caption, the Marsaw Group was the prevailing party in the action which gave rise to the contempt order challenged in the *Martin v. Godinez, et al.*, No. 105116 (Ill. 2007). Illinois Supreme Court Rule 381(c) allows the prevailing party in such an underlying action to file appropriate papers, and the Marsaw Group did file an opposition to the motion for leave to seek an original writ of *habeas corpus*.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES TO THE PROCEEDING BELOW ii

TABLE OF AUTHORITIES vii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 14

I. THERE IS NO JURISDICTION TO REVIEW THIS MATTER, WHICH IS MOOT AND NOT CAPABLE OF REPETITION, AS PETITIONER HAS BEEN RELEASED FROM JAIL AND PURGED OF CONTEMPT AND FINES 14

II. THERE IS NO JURISDICTION TO REVIEW THE ILLINOIS SUPREME COURT'S ORDER BECAUSE (1) NO FEDERAL CLAIM WAS PRESENTED BELOW AND (2) THERE ARE ADEQUATE AND INDEPENDENT STATE GROUNDS FOR THAT ORDER 15

III. DIRECT APPEALS FROM THE UNDERLYING JUDGMENT HAVE BEEN EXHAUSTED AND AN ATTEMPTED PETITION FOR CERTIORARI WAS UNTIMELY; PETITIONER MAY NOT USE THE INSTANT ACTION TO COLLATERALLY ATTACK THE UNDERLYING JUDGMENT 18

TABLE OF CONTENTS – Continued

Page

IV. THE CIRCUIT COURT HAD PROPER PERSONAL AND SUBJECT MATTER JURISDICTION TO ENTER AN ORDER OF CONTEMPT AGAINST PETITIONER, WHO WAS ACTING IN ACTIVE CONCERT WITH PARTIES TO VIOLATE THE COURT'S ORDER 19

CONCLUSION 21

APPENDIX

1. Turnover Order of Illinois Circuit Court, Cook County, County Department, Chancery Division, June 12, 2007 ..... 1a

2. Order of Indirect Civil Contempt of Illinois Circuit Court, Cook County, County Department, Chancery Division, July 19, 2007 ..... 4a

3. Amended Order of Indirect Civil Contempt of Illinois Circuit Court, Cook County, County Department, Chancery Division, September 6, 2007 ..... 6a

4. Order of Commitment of Illinois Circuit Court, Cook County, County Department, Chancery Division, July 25, 2007 ..... 16a

5. Amended Order of Commitment of Illinois Circuit Court, Cook County, County Department, Chancery Division, September 6, 2007 ..... 18a

6. Release Order of Illinois Circuit Court, Cook County, County Department, Chancery Division, September 12, 2007 ..... 22a

7. Office of the Sheriff Eviction Form for 12 S. Oakley dated September 14, 2007 ..... 24a

8. Office of the Sheriff Eviction Form for 2236 W. Monroe dated September 14, 2007 ..... 26a

9. Office of the Sheriff Eviction Form for 2204 W. Washington dated September 14, 2007 ..... 28a

10. Office of the Sheriff Eviction Form for 114 N. Leavitt dated September 14, 2007 ..... 30a

APPENDIX – Continued

11. Order of Illinois Circuit Court Purging Martin of Contempt, Cook County, County Department, Chancery Division, September 27, 2007 ..... 32a

12. Rule to Show Cause of Illinois Circuit Court, Cook County, County Department, Chancery Division, July 5, 2007 ..... 34a

13. Unreported Order of Appellate Court of Illinois First Judicial District, November 22, 2002 ..... 37a

TABLE OF AUTHORITIES

Page

CASES

Federal Trade Commission v. Stroiman, 428 F.2d 808 (8th Cir. 1970) 14

Harris v. Reed, 489 U.S. 255 (1989) 15

In re Campbell, 628 F.2d 1260 (9th Cir. 1980) 14

Iron Arrow Honor Soc. v. Heckler, 464 U.S. 67 (1983) 14

L.A. v. Lyons, 461 U.S. 95 (1983) 14

Lynch v. New York, 293 U.S. 52 (1934) 16

Maggio v. Zeitz, 333 U.S. 56 (1948) 18

Maness v. Meyers, 419 U.S. 449 (1975) 18

Marshall v. Whittaker Corp., 610 F.2d 1141 (3d Cir. 1979) 14, 15

Matter of Berry, 521 F.2d 179 (10th Cir.), *cert. denied*, 423 U.S. 928 (1975) 14

Murrell v. United States, 253 F.2d 267 (5th Cir. 1958) 14

People ex rel. Kazubowski v. Ray, 272 N.E.2d 225 (Ill. 1971) 17

People ex rel. Scott v. Master Barbers & Beauty Culturists Ass'n, 293 N.E.2d 393 (Ill. App. Ct. 1973) 19

Securities and Exchange Commission v. Laird, 598 F.2d 1162 (9th Cir. 1979) 15

TABLE OF AUTHORITIES – Continued

Page

Securities and Exchange Commission v. Sloan, 535 F.2d 679 (2d Cir. 1976), *cert. denied*, 430 U.S. 966 (1977) 14

Sibron v. New York, 392 U.S. 40 (1968) 14

Stavros v. Karkomi, 349 N.E.2d 599 (Ill. App. Ct. 1976) 20

Stotler & Co. v. Able, 870 F.2d 1158 (7th Cir. 1989) 20

United States v. Watson Chapel School District No. 24, 446 F.2d 933 (8th Cir.), *cert. denied*, 404 U.S. 1059 (1971) 14

CONSTITUTIONAL PROVISIONS

Ill. Const. Art. §§ 4(a) and 16 16

STATUTES

735 ILCS 5/11-101 19

Ill. Sup. Ct., R. 381 16

Fed. R. Civ. P. 65(d) 20

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner Larry Martin was found in civil contempt of court in *Marsaw v. Richards*, No. 01 CH 16442 (Cir. Ct. Cook County) ("*Marsaw*"), for acting in concert with the refusal of defendants ("the Richards Group") to turn over all property of the Bethlehem Healing Temple Church to plaintiffs ("the Marsaw Group").[1] When he refused to purge himself of contempt, Martin was committed to the Cook County Jail.[2] Martin chose not to appeal the orders of the circuit court and instead filed a motion with the Illinois Supreme Court for leave to seek an original writ of *habeas corpus*, a motion the Supreme Court denied on August 27, 2007.[3] Thereafter, Martin was released from jail, the Richards Group was evicted from the Church's real property, Martin was purged of his contempt, and the daily fines previously assessed were discharged.[4] Neither the finding of contempt nor Martin's incarceration has any continuing collateral consequences.

---

[1] Turnover Order, a copy of which is included in Respondents' Appendix ("RA") 1a; Contempt Order, RA 4a; Amended Contempt Order, RA 6a.

[2] RA 16a, 18a.

[3] Petitioner's Appendix ("PA") 32a.

[4] Release Order, RA 22a; Eviction Receipts, RA 24a-30a; Purging Order, RA 32a.

The underlying judgment in *Marsaw* was affirmed by the Illinois Appellate Court[5] and the Illinois Supreme Court denied review on March 28, 2007;[6] the time for filing a petition for certiorari in this Court expired on June 26, 2007. The Turnover Order required delivery of the Church property on June 29, 2007.[7] Martin was held in contempt on July 19, 2007[8] and committed to jail on July 25, 2007.[9] On August 2, 2007, the Richards Group attempted to file a petition for certiorari in this Court, which the Clerk rejected as untimely. The Richards Group moved for an order directing the Clerk to accept the petition or for leave to file the petition out of time. This Court denied that motion. *Richards v. Marsaw*, No 07M10 (Oct. 1, 2007).

Martin was released from jail on September 12, 2007, based on his agreement to assist the Marsaw Group in obtaining possession of Church property.[10] On September 14, 2007, his assistance became unnecessary, when the Cook County Sheriff evicted the Richards Group from the Church's real property.[11] On September 27, 2007, the circuit court entered an

---

[5] PA 1a-19a.

[6] PA 20a.

[7] RA 1a.

[8] RA 5a, 7a.

[9] RA 16a.

[10] RA 22a.

[11] RA 24a-30a.

order vacating all fines against Martin and purging him of his contempt.[12]

A. The Proceedings Below.

As the opinion of the appellate court reflects, *Marsaw* was a contest for corporate control of Bethlehem Healing Temple Church and, thereby, of the properties it owns.[13] From August, 2001 until they were evicted by the Cook County Sheriff on September 14, 2007, the Richards Group had physical control of all church properties.[14] The appellate court has described the "arduous and contorted path" of this litigation as "[r]eminiscent of the Israelites flight from Egypt."[15] Extensive proceedings, including two appeals and a trial, resulted in an opinion and judgment on September 23, 2004, that (1) the Richards Group had never been lawful officers or directors of Bethlehem and (2) candidates supported by the Marsaw Group had won a court-ordered election and were entitled to control Bethlehem's properties.[16] As noted above, that judgment was affirmed.

---

[12] RA 32a.

[13] PA 1a.

[14] PA 2a.

[15] PA 1a.

[16] PA 23a.

B. The Turnover Order and the Refusal to Comply.

On June 12, 2007, the circuit court entered a Turnover Order that ordered Defendants to "deliver all personal and real property owned by Bethlehem to the control of the lawful board of directors" including "12 South Oakley, deeds and keys to properties" at noon on June 29, 2007.[17]

Having appeared at various proceedings to contest the Turnover Order, respondents to the *Marsaw* contempt proceedings (including Martin) were well aware of the order. Martin was also personally served with a copy of the Turnover Order.

Martin claims under and through the *Marsaw* Defendants and is legally identified with them. Martin's trial testimony established that he and Defendant Marcenia Richards "work[ed] together" and "share[d] the responsibility of ministering." After this litigation began, he became a purported member of the board and purported co-pastor of Bethlehem, along with Defendant Marcenia Richards. The two of them shared responsibilities which, by Martin's own testimony, included having "absolute authority to make decisions regarding the business, the spiritual life, the gathering of the congregation, and the interaction with the community."

---

[17] RA 1a-3a.

In a June 14, 2007, article in the Chicago Defender, Martin was featured prominently as the pastor of Bethlehem Healing Temple and through the use of "we" and "us," identified himself as subject to the June 12, 2007 Turnover Order. Martin was quoted in the Chicago Defender article as saying, "Per the court order, at 12 p.m. on June 29, we are to turn everything over to them and after that I can't come back in there. I'm not walking out." He went on to say, "[j]ust because the court said to do this, we're not. They may have to bring the sheriff out to remove us."

At noon on June 29, 2007, the court-declared board and counsel went to receive control of Church Property, including the church at 12 South Oakley. Entry to 12 South Oakley was barred by Martin and some of the defendants. William Barker, counsel for the Marsaw Group, told Martin that they were there to receive possession in accordance with the Turnover Order. Martin responded that the Richards Group would not give possession. Mr. Barker asked Martin whether he was familiar with the Turnover Order, and handed him a copy. Martin responded that he was familiar with the Turnover Order and that it would effectively evict the Richards Group from the Church, He read the order and reiterated that they would not comply. Marcenia Richards concurred. Martin acted in active concert with defendants in refusing to comply with the June 12, 2007 Turnover Order, actually taking the lead in asserting that refusal.

C. The Contempt Proceedings.

On June 29, 2007, the Marsaw Group filed a Verified Petition for Rule to Show Cause in the circuit court, asking that court to issue a rule to show cause why Defendants and Martin should not be held in contempt for refusing to comply with the June 12, 2007 Turnover Order. On July 5, 2007, the circuit court entered a Rule to Show Cause ordering Martin and each other Respondent to "appear personally before the Court [on July 19, 2007] and show cause why he should not be held in civil contempt for the violations of [the June 12, 2007 Turnover Order] and committed to County Jail until he complies."[18] Martin was personally served with a copy of this executed Rule to Show Cause on July 13, 2007.

On July 19, 2007, Martin appeared before the circuit court for an evidentiary hearing to determine whether he and the other contempt respondents were in contempt for not complying with the Turnover Order. At all times during the contempt proceedings and the hearings that followed, Martin was represented in the circuit court by counsel. After all evidence and arguments were heard and after Martin had been given a chance to fully present his case, the circuit court entered an order (a) finding Martin, his co-pastor Marcenia Richards, and Marie Oliver in indirect civil contempt and (b) imposing a daily fine

---

[18] RA 35a.

until they complied with the Turnover Order.[19] A status was set for July 23, 2007 to determine whether the contemnors had yet complied. On July 23, 2007, Martin and Oliver again appeared before the circuit court. At the July 23, 2007 hearing, Richards did not appear and a body attachment was issued for her. She has not yet been apprehended. Oliver purged herself of contempt by testifying that she could not compel compliance with the Turnover Order. Martin, however, was unsuccessful at purging himself of contempt and was ordered to appear again on July 25, 2007 to determine whether he had yet complied.

On July 25, 2007, the circuit court found that Martin had not yet complied with the Turnover Order and committed him to the custody of the Cook County Sheriff until such time as he complied with the Turnover Order.[20] A status hearing was held July 26, 2007 to see if Martin had yet complied. At that time, counsel for Martin argued that Martin did not have the power to comply with the Turnover Order and requested a hearing. A status hearing was set for July 27, 2007 to establish whether Martin had the power to comply and whether he had yet complied.

On July 26, counsel for Martin filed a motion to discharge Martin. Allegedly, Martin was improperly held in contempt or had purged the contempt because (1) Martin was not a party to the *Marsaw* case and

---

[19] RA 5a, 7a.

[20] RA 16a, 20a.

was not ordered to do anything and (2) Martin had no ability to comply.

When asked what efforts he had made to comply with the Turnover Order or to persuade others to do so, Martin testified that he met with Marcenia and suggested compliance, but she objected. No one else was consulted. He testified that only the board could authorize compliance but admitted that no meeting had been called. He admittedly had the keys after June 12, but left them in his office when he no longer wanted the responsibility for them. He admitted that he drives a Mercedes furnished to him as pastor. He admitted that a title admitted in evidence appeared to be the title to that car. That title showed Richards and Bethlehem Healing Temple Church as co-owners. Martin admittedly had the keys until shortly before he was incarcerated. He admittedly never offered to turn them over.

On redirect, Martin testified to not having known that the church was a co-owner of the Mercedes. After evading questions about whether he would then turn it over, if ordered to do so, he finally said "I suppose so."

The Marsaw Group called Loncie McCray who testified that, on the evening of June 19, she had seen Martin unlock the church at about 10:00 p.m.

The circuit court ruled that Martin had not purged his contempt. He still had the ability to comply, and even if he had relinquished that power when he left the keys, a voluntary relinquishment of the

power to comply would not discharge the obligation to do so. The court specifically commented that, even when his own lawyer asked Martin to agree to turn over the car, it was like pulling teeth to get an equivocally affirmative answer.

D. Background of the Dispute.

This litigation began as a suit against the late Bishop Arcenia C. Richards, then pastor of Bethlehem, and others (including his daughter, Marcenia Richards) whom he purported to have appointed as directors of Bethlehem. Plaintiffs sought, *inter alia,* an election of directors in accordance with Bethlehem's Articles and a declaration that certain "bylaws" purportedly adopted by the Richards Group were void.

The Richards Group initially persuaded the circuit court to dismiss for want of jurisdiction.[21] The Appellate Court disagreed, and remanded for factual findings of fact and to apply "'neutral principles'" analysis to determine which group should control Bethlehem.[22]

The Marsaw Group relied on Bethlehem's Articles, which the Appellate Court's unreported prior

---

[21] PA 2a.

[22] PA 2a.

opinion sometimes referred to as the "original constitution."[23] The Articles provide that the directors are to be elected by the "members of the church."[24] The Richards Group relied on a set of purported bylaws, which the Appellate Court's unreported prior opinion sometimes referred to as the "2000 constitution." The Appellate Court mandated that the circuit court "determine whether the original constitution remains in effect or if the 2000 constitution was validly passed and supersedes the original constitution."[25] After a two-week bench trial, the circuit court determined, in rulings that were not appealed, that Bishop Richards' appointment of the "board" that purportedly adopted the "bylaws" was unauthorized and its actions void:

> There is no authority that enables the pastor . . . to unilaterally appoint directors. . . . This Court agrees with plaintiffs that the July 11th appointment of directors by Bishop Richards was null and void. Consequently, the subsequent actions of that board are also null and void.[26]
>
> * * *
>
> . . . . The 1980 Articles of Incorporation are the only valid document that determines

---

[23] RA 49a.

[24] RA 39a; Articles of Incorporation, Pls.' Ex. 1, at 10.

[25] RA 49a.

[26] PA 25a.

control of Bethlehem and the purported 2000 constitution is void.[27]

The circuit court then rejected claims that certain members of the Marsaw Group were the lawful directors.[28] In the absence of any current lawful directors, the court ordered an election.[29] Plaintiffs' candidates were declared to be the lawful board, entitled to possess Bethlehem's properties.[30]

As the opinion of the Appellate Court reflects, the Bethlehem congregation was founded in 1932 by the late Bishop Charles E. Poole and his wife Evangelist Mattie B. Poole as a church in the Pentecostal/Apostolic tradition.[31] Bethlehem quickly acquired a following of hundreds of people, and, in 1961, acquired its current home at 12 South Oakley Boulevard.[32]

Bishop Poole and other church leaders incorporated Bethlehem on June 20, 1980, as the "Bethlehem Healing Temple Church," under the General Not-for-profit Corporation Act.[33] The Articles named an initial board of directors, and provided that "the business of

---

[27] PA 27a.

[28] PA 27a.

[29] PA 27a.

[30] PA 29a.

[31] Church History in Bishop Poole's Funeral Program, Jan. 21, 1984, Pls.' Ex. 65 at 2.

[32] *Id.* at 2-3.

[33] Articles 1-3.

the church (corporation) shall be managed by its board of directors."[34] "An annual meeting of the members of the church shall be held on the second Tuesday in July of each year for the purpose of electing directors."[35] Special meetings "of the members of the church" for the purpose of filling vacancies in the board could be called by the board or by not less than one-fifth of all the members.[36] The board may designate the place for any annual or special meeting. The board could fix a record date to determine the "members of the church" entitled to vote.[37] Membership rosters were required to be maintained by "[t]he officer having charge of the membership records of the corporation (church)" and made available for inspection.[38] "In all elections for directors, every member shall have the right to vote" using cumulative voting.[39]

The evidence is undisputed that, prior to 2001 no one in the congregation (other than the incorporators, Bishop Richards, and the few close associates Bishop Richards told) knew the corporation existed, there were no meetings of the members of the church to

---

[34] Articles 2, 10.

[35] Articles 8.

[36] Articles 8.

[37] Articles 8.

[38] Articles 9.

[39] Articles 10.

elect directors, and the board of directors never functioned.[40]

In 1984, Bethlehem's founder and pastor, Bishop Poole, died.[41] The congregation organized an election, constructing an agreed roster of members entitled to vote.[42] Bishop Richards was elected to become the new pastor.[43] As the circuit court noted, "[h]ad Bishop Poole engaged in nepotism and appointed a family member as his successor, Bishop Richards would never have become pastor."[44] Rather, Bishop Richards became pastor by the authority of a congregational vote.

In 2001, a dispute arose over church finances, and, in May, 2001, the congregation voted 192-20 to remove Bishop Richards as pastor.[45] He refused to step down, and this litigation ensued. Before his death in August, 2001, Bishop Richards purported to appoint his daughter Marcenia to succeed him as pastor.[46]

---

[40] PA 4a.

[41] PA 3a.

[42] PA 3a; Report of Proceedings ("RP") Vol. 17 at 47:4-22; Pls.' Ex. 24.

[43] PA 3a.

[44] PA 25a.

[45] PA 3a.

[46] PA 3a.

REASONS FOR DENYING THE WRIT

I. THERE IS NO JURISDICTION TO REVIEW THIS MATTER, WHICH IS MOOT AND NOT CAPABLE OF REPETITION, AS PETITIONER HAS BEEN RELEASED FROM JAIL AND PURGED OF CONTEMPT AND FINES.

"[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Art. III of the Constitution by alleging an actual case or controversy."[47] Moot cases do not satisfy the case or controversy requirement because a judicial decision can no longer grant any favorable relief.[48] A criminal case is moot upon the convict's release unless collateral consequences will be imposed on the basis of the conviction.[49] This principle holds even stronger for civil contempt once the contempt has been purged.[50] "Unlike a criminal

---

[47] *L.A. v. Lyons*, 461 U.S. 95, 101 (1983).

[48] *Iron Arrow Honor Soc. v. Heckler*, 464 U.S. 67, 70 (1983).

[49] *Sibron v. New York*, 392 U.S. 40, 57 (1968).

[50] *In re Campbell*, 628 F.2d 1260, 1261 (9th Cir. 1980) ("A long line of precedent holds that once a civil contempt order is purged, no live case or controversy remains for adjudication.") (*citing Marshall v. Whittaker Corp.*, 610 F.2d 1141 (3d Cir. 1979); *Securities and Exchange Commission v. Sloan*, 535 F.2d 679 (2d Cir. 1976); *cert. denied*, 430 U.S. 966 (1977); *Matter of Berry*, 521 F.2d 179 (10th Cir.), *cert. denied*, 423 U.S. 928 (1975); *United States v. Watson Chapel School District No. 24*, 446 F.2d 933 (8th Cir.), *cert. denied*, 404 U.S. 1059 (1971); *Federal Trade Commission v. Stroiman*, 428 F.2d 808 (8th Cir. 1970); *Murrell v. United*

(Continued on following page)

conviction or involuntary commitment to a mental hospital, an adjudication of civil contempt carries with it no possibility of collateral deprivations of civil rights or other specifically legal consequences."[51]

Though he was incarcerated for civil contempt, Martin has been released from custody, has fully complied with the circuit court's order, and has had all fines vacated and contempt purged. The contempt order is moot as to Martin.

II. THERE IS NO JURISDICTION TO REVIEW THE ILLINOIS SUPREME COURT'S ORDER BECAUSE (1) NO FEDERAL CLAIM WAS PRESENTED BELOW AND (2) THERE ARE ADEQUATE AND INDEPENDENT STATE GROUNDS FOR THAT ORDER.

It is well established that this Court does not have jurisdiction to review state court orders "if that judgment rests on a state-law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision."[52] Moreover, in order for this Court to have jurisdiction, the record must affirmatively show not only that a federal question was presented, but that the state court's decision of the federal question "was necessary to the

---

States, 253 F.2d 267 (5th Cir. 1958); *Securities and Exchange Commission v. Laird*, 598 F.2d 1162 (9th Cir. 1979)).

[51] *Marshall*, 610 F.2d at 1145.

[52] *Harris v. Reed*, 489 U.S. 255, 260 (1989).

determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it."[53] "[I]f it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction."[54]

The decision that is the subject of the instant petition is that of the Illinois Supreme Court denying a motion brought by Martin pursuant to Sections 4(a) and 16 of Article VI of the Illinois Constitution and under Illinois Supreme Court Rule 381. Martin pled solely pursuant to Illinois law and did not plead pursuant to any federal statute or federal constitutional right. Martin's failure to assert any federal claim means that none was adjudicated below, unless the Illinois Supreme Court raised and decided such an issue sua sponte.

Illinois state law does provide for original actions relating to *habeas corpus*, but Rule 381 merely allows for a motion requesting leave to file, giving the Illinois Supreme Court discretion whether to allow the filing of a complaint.[55] An original action for *habeas corpus* is not only discretionary, it is also an "extraordinary

---

[53] *Lynch v. New York*, 293 U.S. 52, 55 (1934) (citations omitted).

[54] *Id.* (citations omitted).

[55] Ill. Sup. Ct., R. 381.

remedy" which "may not be used to perform the functions of an appeal."[56]

In the instant case, Martin chose not to take an appeal of right in the appellate court, but instead filed a discretionary extraordinary writ in the Illinois Supreme Court. As such, state law provided the Illinois Supreme Court with adequate and independent state-law grounds to exercise its discretion and deny Martin's motion.

The decision of the Illinois Supreme Court is silent as to the grounds on which it based its decision, and nothing in the record affirmatively shows that the Illinois Supreme Court relied on federal law in denying Martin's motion for leave to seek an original writ of *habeas corpus* pursuant to Illinois law. Absent an affirmative showing that this decision was based on federal law, the Court should not take jurisdiction, given the state grounds that are adequate and independent.

---

[56] *People ex rel. Kazubowski v. Ray*, 272 N.E.2d 225, 227 (Ill. 1971).

III. DIRECT APPEALS FROM THE UNDERLYING JUDGMENT HAVE BEEN EXHAUSTED AND AN ATTEMPTED PETITION FOR CERTIORARI WAS UNTIMELY; PETITIONER MAY NOT USE THE INSTANT ACTION TO COLLATERALLY ATTACK THE UNDERLYING JUDGMENT.

Even if ultimately ruled incorrect, court orders must be obeyed until overruled on appeal.[57] "[A] contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy."[58] In his petition, Martin tries to raise issues regarding the action underlying the Turnover Order, but raising this in a review of the Illinois Supreme Court *habeas corpus* order is a collateral attack and should be barred.

The underlying decision in *Marsaw* has been completely litigated and should not be relitigated in these proceedings. The opportunities to appeal the judgment have been exhausted. The Richards Group appealed to the Illinois Appellate Court and lost. It filed a petition for leave to appeal in the Illinois Supreme Court and was denied. Rather than file a timely petition in this Court, it sought leave to file a motion of reconsideration in the Illinois Supreme Court twice and was denied both times. When the

---

[57] *Maness v. Meyers*, 419 U.S. 449, 458 (1975).

[58] *Maggio v. Zeitz*, 333 U.S. 56, 69 (1948).

Richards Group did attempt to file a petition for writ of certiorari in this Court, it was properly denied as untimely.

All direct appeals from the *Marsaw* judgment have been exhausted, making that judgment final. Martin may not attack that judgment in the instant petition.

IV. THE CIRCUIT COURT HAD PROPER PERSONAL AND SUBJECT MATTER JURISDICTION TO ENTER AN ORDER OF CONTEMPT AGAINST PETITIONER, WHO WAS ACTING IN ACTIVE CONCERT WITH PARTIES TO VIOLATE THE COURT'S ORDER.

The Illinois Code of Civil Procedure establishes that "[e]very order granting an injunction . . . is binding . . . upon the parties to the action . . . and upon those *persons in active concert or participation* with them *who receive actual notice of the order* by personal service or otherwise."[59] This proposition also applies to affirmative injunctions such as the one at issue in the underlying case.[60]

---

[59] 735 ILCS 5/11-101 (emphasis added).

[60] *People ex rel. Scott v. Master Barbers & Beauty Culturists Ass'n*, 293 N.E.2d 393, 396-97 (Ill. App. Ct. 1973) (holding that a nonparty not served with process could still be in contempt for not complying with an injunction because he had met with the enjoined party and took actions that aligned with the enjoined

(Continued on following page)

While Martin was not a party to the *Marsaw* action, he was very closely affiliated with the Richards Group prior to and at the time he was held in contempt. On June 29, 2007, Martin took the lead in refusing to obey the Turnover Order. Martin's actions in concert with the Richards Group and his knowledge of the Turnover Order subjected him to the jurisdiction of the circuit court for purposes of entering a contempt order.

There can be no serious claim that Illinois law authorizing contempt proceedings against nonparties is unconstitutional. Rule 65(d) of the Federal Rules of Civil Procedure likewise allows a court to hold "a nonparty in contempt if that person has 'actual knowledge' of the court order and 'either abets the [party named in the court order] or is legally identified with him.' "[61]

Martin had actual knowledge of the Turnover Order. He was quoted in the June 14, 2007 issue of the Chicago Defender acknowledging the existence of the order and stating the intent to defy it. He was present in court on June 19, 2007, accompanying Marcenia Richards when she presented a motion to vacate the Turnover Order. On June 29, 2007, he acknowledged familiarity with the order, and a copy of the order was exhibited to him. Nonetheless, he

---

party's interests); *see also Stavros v. Karkomi*, 349 N.E.2d 599, 606 (Ill. App. Ct. 1976).

[61] *Stotler & Co. v. Able*, 870 F.2d 1158, 1164 (7th Cir. 1989).

repeatedly refused to comply. Accordingly, the circuit court had jurisdiction to hold him in civil contempt for refusing to comply with the Turnover Order.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

WILLIAM T. BARKER
Counsel of Record
DAVID R. GEERDES
SONNENSCHEIN NATH & ROSENTHAL LLP
233 South Wacker Dr., Ste. 7800
Chicago, Illinois 60606
(312) 876-8000

Attorneys for the Plaintiffs (Prevailing Parties) in Marsaw v. Richards, *No. 01 CH 16442 (Cir. Ct. Cook County)*

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT,
CHANCERY DIVISION

ROOSEVELT MARSAW, CHESTER HUDSON, CLARENCE BROWNLOW, LONCIE McCRAY, and EUGENE PRICE, Directors of Bethlehem Healing Temple Church, Inc.; GEORGE GIBSON, Member of Bethlehem Healing Temple Church; LIVING WITNESSES OF THE APOSTOLIC FAITH, INC.; and CLORD JORDAN, Presiding Bishop of the Living Witnesses of the Apostolic Faith, and Administrator of Bethlehem Healing Temple Church,	Case No. 01 CH 16442
Plaintiffs,	**Judge Kathleen M. Pantle**
v.	
MARCENIA J. RICHARDS, LELA WALKER, MARIE OLIVER, MICHAEL MORRIS, A.C. RICHARDS, JR., and BETHLEHEM HEALING TEMPLE CHURCH, INC.,	
Defendants.	

Turnover Order

This Court having previously entered an Order recognizing the legitimate Board of Directors elected on September 21, 2004 and an Order of Possession on October 1, 2001, the Board of Directors having decided that Defendant-Appellants should not retain control of church assets,

The Illinois Supreme Court having (1) entered a stay of the proceedings in this Court pending the outcome of Defendants petition for leave to appeal, (2) denied Defendants petition for leave to appeal, (3) denied Defendants subsequent motions for reconsideration, and (4) issued the Mandate to the Appellate Court,

The Appellate Court having issued the mandate to this Court,

IT IS HEREBY ORDERED THAT:

a) At noon on June 29, 2007, or at such earlier time as the parties may agree, at 12 South Oakley or at such other place as the parties may agree, Defendants shall deliver all personal and real property owned by Bethlehem to the control of the lawful board of directors including such individuals as the lawful board of directors, or a majority of its members, directs to manage or control the property. Defendants shall vacate all Bethlehem property except that which they occupy exclusively as a residence. Defendants shall take all steps necessary to facilitate the transfer of all Bethlehem property including all real and personal property including 2204 West

Washington, 114 North Leavitt, 2236 West Monroe, 12 South Oakley, deeds and keys to properties, buildings, equipment, records, vehicles, vehicle keys and titles, post office box keys, safe deposit box keys, computers, bank accounts, insurance policies, utility accounts, and any assets or accounts of any kind owned by Bethlehem.

b) Defendants shall cooperate fully with the transition of power that is hereby ordered.

c) Plaintiffs' request for an award of costs is deferred for separate consideration.

Issues regarding Plaintiffs' demand for an accounting remain to be decided. But this Court found that there was no just reason to delay enforcement or appeal of its September 23, 2004 Order, which this Order enforces, pending resolution of that issue. Accordingly, this Order is enforceable immediately.

Entered: Kathleen M. Pantle
Judge Kathleen M. Pantle

Date: June 12, 2007

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT -
CHANCERY DIVISION

ROOSEVELT MARSAW, et al.,	)	
Plaintiffs,	)	
Vs.	)	**No. 01 CH 16442**
MARCENIA RICHARDS, et al.,	)	
Defendants.	)	

ORDER OF INDIRECT CIVIL CONTEMPT

This matter comes to be heard on Plaintiffs' Petition for a Rule to Show Cause; Defendants Marcenia Richards, Larry Martin, and Marie Oliver having been properly served and appearing in open court; the Court having subject matter jurisdiction; IT IS HEREBY FOUND AND ORDERED:

This Court entered a lawful Order on June 12, 2007 ("turnover Order") commanding defendants to turn over property belonging to Bethlehem Healing Temple Church ("Bethlehem") to plaintiffs by noon on June 29, 2007.

Each defendant has been properly served with the turnover Order of June 12, 2007. Defendants and each of them have violated this Order by failing to turn over the property belonging to Bethlehem as set forth in the Order.

Defendants and each of them have been given a reasonable opportunity to comply with this Order, including, but not limited to an encounter between plaintiffs and plaintiffs' counsel on June 29, 2007, shortly after 12:00 p.m.

Defendants' refusal to comply is willful and contumacious.

Accordingly, an adjudication of civil contempt is hereby entered, and sanctions are imposed as follows:

Each defendant shall be fined $200.00 per day every day until the court Order of June 12, 2007 is complied with. The fine shall be paid to the Clerk of the Circuit Court of Cook County. Any monies belonging to Bethlehem shall NOT be used for this purpose. Only personal monies belonging defendants shall be used.

Defendants may purge themselves of this contempt by delivering to plaintiffs or plaintiffs' counsel, the law firm of Sonnenschein Nath & Rosenthal, L.L.C., the property of Bethlehem.

This matter is set for further status on July 23, 2007 at 1:30 p.m. at which time this Court will consider further sanctions should the Order not be complied with by that date and time.

DATE: July 19, 2007

Kathleen M. Pantle
Kathleen M. Pantle

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT,
CHANCERY DIVISION

ROOSEVELT MARSAW, et al., Plaintiffs,	)	
v.	)	**No. 01 CH 16442** **Judge** **Kathleen M. Pantle**
MARCENIA J. RICHARDS, et al., Defendants.	)	

AMENDED ORDER OF INDIRECT CIVIL CONTEMPT

On July 19, 2007, this Court entered an Order of Indirect Civil Contempt, based upon oral findings and oral statements of the conduct required to purge the contempt, all which were transcribed by a court reporter; this Amended Order is entered nunc pro tunc to memorialize those oral findings and oral statements.

This matter comes to be heard on Plaintiffs' Petition for a Rule to Show Cause; Defendants Marcenia Richards, Larry Martin, and Marie Oliver having been properly served and appearing in open court; the Court having subject matter jurisdiction; IT IS HEREBY FOUND AND ORDERED:

The oral findings of this Court, attached hereto, made at the close of the July 19, 2007 hearing on a

rule to show cause, are hereby incorporated into this Order.

This Court entered a lawful Order on June 12, 2007 ("Turnover Order") commanding defendants to turn over property belonging to Bethlehem Healing Temple Church ("Bethlehem") to plaintiffs by noon on June 29, 2007.

Each defendant has been properly served with the Turnover Order of June 12, 2007. Respondents and each of them have violated this Order by failing to turn over the property belonging to Bethlehem as set forth in the Order.

Respondents and each of them have been given a reasonable opportunity to comply with this Order, including, but not limited to an encounter with plaintiffs and plaintiffs' counsel on June 29, 2007, shortly after 12:00 p.m.

Respondents' refusal to comply is willful and contumacious.

Accordingly, an adjudication of civil contempt is hereby entered, and sanctions are imposed as follows:

Each defendant shall be fined $200.00 per day every day until the court Order of June 12, 2007 is complied with. The fine shall be paid to the Clerk of the Circuit Court of Cook County. Any monies belonging to Bethlehem shall NOT be used for this purpose. Only personal monies belonging to Respondents shall be used.

Respondents may purge themselves of this contempt by delivering all corporate property to plaintiffs, plaintiffs' counsel, the law firm of Sonnenschein Nath & Rosenthal, LLP, or one of the lawful directors of Bethlehem, Loncie McCray, Clarence Brownlow, James Ketchum, Chester Hudson, or Eugene Price, the property of Bethlehem.

Date: September 6, 2007

Entered: Kathleen M. Pantle
Judge Kathleen M. Pantle

Attorneys for Plaintiffs
William T. Barker
Terrance A. Norton
David R. Geerdes
Sonnenschein Nath
& Rosenthal LLP
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

ROOSEVELT MARSAW, CHESTER HUDSON, CLARENCE BROWNLOW, LONCIE McCRAY, and EUGENE PRICE, Directors of Bethlehem Healing Temple Church, Inc.; GEORGE GIBSON, Member of Bethlehem Healing Temple Church; LIVING WITNESSES OF THE APOSTOLIC FAITH, INC.; and CLORD JORDAN, Presiding Bishop of the Living Witnesses of the Apostolic Faith, and Administrator of Bethlehem Healing Temple Church,	No. 01 CH 16442
Plaintiffs,	
vs.	
MARCENIA J. RICHARDS, LELA WALKER, MARIE OLIVER, MICHAEL MORRIS, A.C. RICHARDS JR., and BETHLEHEM HEALING TEMPLE CHURCH, INC.,	
Defendants.	

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause before the Honorable KATHLEEN M. PANTLE, Judge of said Court, in Room 2410, Richard J. Daley Center, Chicago, Illinois, on the 19th day of July, 2007, at the hour of 1:30 o'clock p.m.

PRESENT:

SONNENSCHEIN NATH & ROSENTHAL LLP
BY: MR. ANTHONY T. ELISEUSON
MR. DAVID R. GEERDES
8000 Sears Tower
Chicago, Illinois 60606

Appeared on behalf of the Plaintiffs;

RICHARDSON & MACKOFF
BY: MR. TRAVIS RICHARDSON
400 South Dearborn Street
Chicago, Illinois 60605

Appeared on behalf of the Defendants.

REPORTED BY:
KIMBERLY WINKLER CHRISTOPHER, CSR, RPR
CERTIFICATE NO. 084-00275

[117] Thank you, your Honor.

THE COURT: Okay. Having heard all the evidence, the arguments of both sides, my findings are as follows: That this matter has come to be heard on plaintiffs' verified petition for a rule to show cause. Marie Oliver, Marcenia Richards, and Larry Martin having been properly served with the petition and

appearing here in open court. The court does have subject matter jurisdiction over these proceedings.

This court entered a lawful order dated June 12th, 2007, ordering the defendants to turn over property belonging to Bethlehem Healing Temple Church by noon on June 12th – I'm sorry – June 29th, 2007. Each defendant has been properly served with a copy of this court order.

I believe the court order is clear, though there may be some – the court order is clear. It asks for deeds and keys to the property. There's no dispute about what is meant by that. Buildings, records, vehicles, vehicle keys and titles, post office box keys, safety-deposit box keys, computers, bank accounts, insurance policies, utility accounts.

[118] The defense argues that equipment may be construed to be vague, assets and accounts of any kind may be construed to be vague. The problem I'm having here is that, first of all, I don't think that in and of themselves are vague; but in any event, nothing has been turned over. If it was just a failure to turn over equipment and any assets and accounts, you know, that would be one thing. But it's not. It's a flat-out refusal to turn anything over. And the court order has spelled out with specificity what exactly the plaintiffs are looking for and what they're entitled to.

But this court order is based on previous rulings by Thomas Quinn of the Circuit Court of Cook County, which ruling was affirmed by the appellate court. PLA was denied by the Illinois Supreme Court.

The defendants Oliver, Richards, and Martin have violated this court order by failing to turn over the property belonging to Bethlehem; that they were given reasonable opportunities to turn over the properties, specifically on June 29th, 2007.

After 12:00 p.m. when plaintiffs – that [119] being the board of directors, which was lawfully elected – and plaintiffs' counsel William Barker appeared and asked for the property, the defendants without any justification contumaciously and willfully refused to turn over the property to the lawful board of directors, that being the plaintiffs.

Lela Walker is not going to be included in this contempt order because I don't have any evidence that she's been served, and it's my understanding she's an elderly woman with some health problems here. And also Pastor Hudson testified that he wasn't sure that she was there. So just to be clear, this order refers to defendants Oliver, Richards, and Martin.

But the defendants have had the opportunity to comply; that they have refused to comply; that there have been several court dates. They have had all this time. It's now July 19th. They could comply at any time merely by turning the property over to the lawful board of directors.

There is an adjudication of civil contempt; that the defendants Oliver, Richards, [120] and Martin are found in contempt; that they have refused – willfully refused to obey the lawful order of the court. This is beyond the point of negotiation.

Judge Quinn's order was entered in 2004. I understand that there was an appeal. I don't have a problem with the order being stayed pending the appeal. Obviously that was lawful. But the mandate has issued some time ago. The order was entered some time ago. This is beyond the point of negotiation.

So at this point sanctions are as follows: Each defendant will pay a 200-dollar per day fine for every day that they refuse to turn the property over, the payments to be made to the Clerk of the Circuit Court of Cook County.

The funds are not to be taken from church funds. If funds are taken from any monies belonging to the church, that being Bethlehem Healing Temple Church, this court will contact the Cook County State's Attorney office to initiate criminal contempt proceedings and possibly theft proceedings. That would be the recommendation of the court.

[121] So now obviously the Cook County State's Attorney's office – the State's Attorney being the elected prosecutor, it's up to them whether or not to file the charges. But in any event, the court will contact the State's Attorney's office and recommend that they initiate criminal contempt proceedings at the very least against the defendants if any monies from the church are used.

Defendants may purge themselves of this fine by turning over the property to any one of the members of the board of directors or to plaintiffs' counsel, any – if

they want to drop the keys off at the offices of Sonnenschein Nath & Rosenthal, that's fine with me. They don't even have to turn them over to Mr. Barker. They can turn them over to any attorney at Sonnenschein.

We are going to give this a status date of Monday, July 23rd. If defendants have not purged themselves of the contempt on that date, then I will take up the issue of other sanctions. And other sanctions can include time at the Cook County Jail; that being that the defendants at that point could be ordered to the custody of the Cook County Sheriff until they purge themselves.

[122] So from today until Monday it's a 200-dollar a day per fine, fine per day until they purge themselves. If they haven't purged themselves by Monday morning at 9:30, then at that point the court will consider other sanctions, including time at the Cook County Jail.

The defendants are not to leave the courtroom. The sheriff is directed to keep them there until they are – do you have a draft order or do you think we need to type one up?

MR. ELISEUSON: I think we'll need to type one up.

THE COURT: Okay. I'll go – you don't have a draft order?

MR. GEERDES: Not for fines.

MR. ELISEUSON: We can probably –

THE COURT: Can I see your order because we can amend the order you have.

MR. RICHARDSON: I'd like to see it, too, before that happens.

Your Honor, for the record, I understand the per diem is not each individual but –

THE COURT: Yes. It's $200 a day per defendant.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MARSAW, ET AL. Plaintiffs

v.

RICHARDS, ET AL., Defendants.

No. 01 CH 16442

ORDER OF COMMITMENT*

After a hearing on a rule to show cause,*

It is found that respondent Larry Martin **is guilty of willful contempt for** refusing to comply with this Court's Turnover Order dated June 12, 2007.

It is ordered that the sheriff take and keep custody of Larry Martin until such time as he chooses to comply with this Court's Turnover Order dated June 12, 2007 **or until released by process of law.** [The Sheriff is directed to bring Larry Martin back to the Court at 3:00 on June 26, 2007.] ~~The commitment shall not [illegible].~~

July 25, 2007

Kathleen M. Pantle 1775
Judge **Judge's No.**

Atty. No.: 90784
Name: David R. Geerdes
Atty. for: Plaintiffs
Address: 233 S. Wacker Dr., Ste. 7800

* Delete if inapplicable.

City/State/Zip: Chicago, IL 60606
Telephone: (312) 876-8000

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT,
CHANCERY DIVISION

ROOSEVELT MARSAW, et al.,	) **No. 01 CH 16442**
	) **Judge**
Plaintiffs,	) **Kathleen M. Pantle**
	)
v.	)
MARCENIA J. RICHARDS, et al.,	)
	)
Defendants.	)

AMENDED ORDER OF COMMITMENT

After a hearing on a rule to show cause held on July 19, 2007, IT IS HEREBY FOUND AND ORDERED:

On July 19, 2007, this Court found Respondent Larry Martin in indirect civil contempt based upon transcribed oral findings, which are memorialized in an Amended Order of Indirect Civil Contempt, dated September 6, 2007, the contents of which are incorporated in this order by reference.

On July 25, 2007, at a hearing where Martin was represented by attorneys Travis Richardson and Clarence Burch, this Court found that Martin had not purged himself of contempt and was then unwilling to deliver possession to the lawful board of Bethlehem Healing Temple Church (Bethlehem) or to assist the lawful board in obtaining possession. Accordingly, this Court entered an order committing Martin to the

custody of the sheriff until such time as he chooses to comply with the June 12, 2007 Turnover Order.

On July 27, 2007, Martin, again represented by Messrs. Richardson and Burch, appeared before this Court for a hearing, seeking to purge himself of contempt. At that time, this Court found that Martin had acted in concert with the defendants in refusing to comply with the June 12, 2007 Turnover Order. This Court found that Martin has been co-pastor at Bethlehem for four years. Martin conversed with the lawful board of directors of Bethlehem and plaintiffs' counsel on June 29, 2007 around noon, the time by which defendants were ordered to turn over Bethlehem property to the lawful board. At that time, Martin refused to turn over any Bethlehem property.

Martin testified that he did not, at that time or since, have possession of the keys to any of Bethlehem's properties. But he admitted that this was because, after entry of the Turnover Order, he had voluntarily left those keys in his office in the Church at 12 South Oakley, obtaining entry thereafter by having a custodian open the property. Martin had previously refused to tell this Court the name of the custodian or to direct the custodian to allow the lawful board of directors to enter and take possession. Moreover, Martin admitted that he had had possession of a car owned 50% by Bethlehem, which he claimed not to have known was corporate property. When asked by his own lawyer whether he would now turn over the car, if ordered to do so, the most

affirmative response Martin could manage was "I suppose so."

Martin has not shown that he made reasonably diligent efforts to comply with this Court's Turnover Order or that he is now willing to do so. Martin had the power to comply with the Turnover Order, but had repeatedly refused to do so and continued to refuse. He still has the ability to comply, and even if he had relinquished that power when he left the keys, a voluntary relinquishment of the power to comply would not discharge the obligation to do so.

Respondent Larry Martin is guilty of willful contempt for refusing to comply with this Court's Turnover Order dated June 12, 2007. It is ordered that the sheriff keep custody of Larry Martin until such time as he chooses to purge himself of contempt by delivering to plaintiffs, plaintiffs' counsel, the law firm of Sonnenschein Nath & Rosenthal, LLP, or one of the lawful directors of Bethlehem, Loncie McCray, Clarence Brownlow, James Ketchum, Chester Hudson, or Eugene Price, the property belonging to Bethlehem Healing Temple Church ("Bethlehem") identified in this Court's June 12, 2007 Turnover Order or until released by process of law.

Date: September 6, 2007

Entered: Kathleen M. Pantle
Judge Kathleen M. Pantle

Attorneys for Plaintiffs
William T. Barker
Terrance A. Norton

David R. Geerdes
Sonnenschein Nath & Rosenthal LLP
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Marsaw, et al Plaintiffs **v.** Richards, et al Defendants	**No.** 01 CH 16442

ORDER

This matter having come before this Court on status and the Court being fully advised on the premises IT IS HEREBY ORDERED:

~~The sheriff is to release Larry Martin from custody on September 12, 2007.~~

Judge Pantle orders the release of Larry Martin from the custody of the Cook County Sheriff's Department from 26th and California *and* the Daley Center immediately today on September 12, 2007.

ENTERED:

Dated: SEP 12, 2007

Kathleen M. Pantle 1775
Judge **Judge's No.**

Atty. No.: 90784
Name: David Geerdes
Atty. for: Plaintiffs
Address: 7800 Sears Tower

City/State/Zip: Chicago, IL 60606
Telephone: 312-876-8000

[LOGO] **Office of the Sheriff of Cook County Thomas J. Dart, Sheriff** [LOGO]

By order of the Circuit Court of Cook County, possession of the real property located at:
12 S Oakly Chgo, Cook County, Illinois
(Street Address) (City)
has been tendered to Roosevelt Marsaw,
(Printed Name of Plaintiff/
Agent for Plaintiff)

Plaintiff / Agent for Plaintiff
(Circle One)

The Sheriff of Cook County has removed all persons from the real property. Absent any furnishings and/or appliances provided by the landlord, the property left inside the premises is the personal property of the persons evicted. The plaintiff understands and agrees the defendant and/or any other interested third party shall be afforded a reasonable time to claim his/her personalty and to have the property removed from the premises. The removal of personal property will be at the discretion of the plaintiff and does not require the plaintiff to allow the defendant into the premises. The plaintiff understands that depriving persons of their personal property may be actionable both criminally and civilly under the laws of the State of Illinois and the United States of America.

Sheriff's Number: 118272 Case Number: 01CH16442

Possession tendered to: /s/	X David R. Geerdes Signature of Plaintiff/Agent for Plaintiff		9/14 Date
By Deputy Sheriff: /s/	[Illegible] Signature of Deputy Sheriff	5125 Star Number	9/14 Date

[LOGO] **Office of the Sheriff of Cook County Thomas J. Dart, Sheriff** [LOGO]

By order of the Circuit Court of Cook County, possession of the real property located at:
2236 W Monroe Chgo, Cook County, Illinois
(Street Address) (City)
has been tendered to Roosevelt Marsaw,
(Printed Name of Plaintiff/ Agent for Plaintiff)

Plaintiff / Agent for Plaintiff
(Circle One)

The Sheriff of Cook County has removed all persons from the real property. Absent any furnishings and/or appliances provided by the landlord, the property left inside the premises is the personal property of the persons evicted. The plaintiff understands and agrees the defendant and/or any other interested third party shall be afforded a reasonable time to claim his/her personalty and to have the property removed from the premises. The removal of personal property will be at the direction of the plaintiff and does not require the plaintiff to allow the defendant into the premises. The plaintiff understands that depriving persons of their personal property may be actionable both criminally and civilly under the laws of the State of Illinois and the United States of America.

Sheriff's Number: 118306 Case Number: 01CH16442

Possession tendered to: /s/ X David R. Geerdes 9-14
Signature of Plaintiff/Agent for Plaintiff — Date

By Deputy Sheriff: /s/ [Illegible] 4965 9-14
Signature of Deputy Sheriff — Star Number — Date

[LOGO] **Office of the Sheriff of Cook County Thomas J. Dart, Sheriff** [LOGO]

By order of the Circuit Court of Cook County, possession of the real property located at:
2204 W Washington Chgo, Cook County, Illinois
(Street Address) (City)
has been tendered to X Chester Hudson,
(Printed Name of Plaintiff/ Agent for Plaintiff)

Plaintiff / Agent for Plaintiff
(Circle One)

The Sheriff of Cook County has removed all persons from the real property. Absent any furnishings and/or appliances provided by the landlord, the property left inside the premises is the personal property of the persons evicted. The plaintiff understands and agrees the defendant and/or any other interested third party shall be afforded a reasonable time to claim his/her personalty and to have the property removed from the premises. The removal of personal property will be at the direction of the plaintiff and does not require the plaintiff to allow the defendant into the premises. The plaintiff understands that depriving persons of their personal property may be actionable both criminally and civilly under the laws of the State of Illinois and the United States of America.

Sheriff's Number: 118271 Case Number: 01CH16442

Possession tendered to: /s/ Chester Hudson 9-14-07
Signature of Plaintiff/Agent for Plaintiff — Date

By Deputy Sheriff: /s/ [Illegible] 5125 9-14-07
Signature of Deputy Sheriff — Star Number — Date

[LOGO] **Office of the Sheriff of Cook County Thomas J. Dart, Sheriff** [LOGO]

By order of the Circuit Court of Cook County, possession of the real property located at:
114 N Leavitt Chgo, Cook County, Illinois
(Street Address) (City)
has been tendered to X Chester Hudson,
(Printed Name of Plaintiff/ Agent for Plaintiff)

Plaintiff / Agent for Plaintiff
(Circle One)

The Sheriff of Cook County has removed all persons from the real property. Absent any furnishings and/or appliances provided by the landlord, the property left inside the premises is the personal property of the persons evicted. The plaintiff understands and agrees the defendant and/or any other interested third party shall be afforded a reasonable time to claim his/her personalty and to have the property removed from the premises. The removal of personal property will be at the direction of the plaintiff and does not require the plaintiff to allow the defendant into the premises. The plaintiff understands that depriving persons of their personal property may be actionable both criminally and civilly under the laws of the State of Illinois and the United States of America.

Sheriff's Number: 118270 Case Number: 01CH16442

Possession tendered to: /s/ X Chester Hudson 9/14/07
Signature of Plaintiff/Agent for Plaintiff — Date

By Deputy Sheriff: /s/ [Illegible] 5125 9/14/07
Signature of Deputy Sheriff — Star Number — Date

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Marsaw, et al Plaintiffs	
v.	**No.** 01 CH 16442
Richards, et al Defendants	

ORDER

This matter coming to be heard on status, the Court being fully advised, IT IS HEREBY ORDERED:

All fines assessed against Defendant Oliver and Respondent Martin are vacated.

This matter is set for further status on Tuesday, October 16, 2007 at 10:00 a.m. in Room 2410 without further notice.

ENTERED:

Dated: SEP 27, 2007

Kathleen M. Pantle 1775
Judge **Judge's No.**

Atty. No.: 38643
Name: Travis Richardson
Atty. for: Def.
Address: 407 S. Dearborn Ste 1310

City/State/Zip: Chicago, IL 60605
Telephone: 312 296 9706/312 922 5206

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT,
CHANCERY DIVISION

ROOSEVELT MARSAW, CHESTER HUDSON, CLARENCE BROWNLOW, LONCIE McCRAY, and EUGENE PRICE, Director of Bethlehem Healing Temple Church, Inc.; GEORGE GIBSON, Member of Bethlehem Healing Temple Church; LIVING WITNESSES OF THE APOSTOLIC FAITH, INC.; and CLORD JORDAN, Presiding Bishop of the Living Witnesses of the Apostolic Faith, and Administrator of Bethlehem Healing Temple Church,	)	Case No. 01CH 16442
Plaintiffs,	)	**Judge Kathleen M. Pantle**
v.	)	
MARCENIA J. RICHARDS, LELA WALKER, MARIE OLIVER, MICHAEL MORRIS, A.C. RICHARDS, JR., and BETHLEHEM HEALING TEMPLE CHURCH, INC.,	)	
Defendants.	)	

Rule to Show Cause

This matter coming before the Court on the attached Plaintiffs' Verified Petition For Rule To Show Cause Why Defendants Should Not Be Held In Contempt and the attached supporting declaration,

Defendants and each of them except Michael Morris are ordered to appear personally before the Court on July 19, at 1:30 _.m., in Room 2410 Daley Center, and show cause why each of them should not be held in civil contempt for the violations of this Court's order alleged in the Petition and committed to County Jail until they comply. Larry Martin is ordered to appear personally before the Court at that same time and place and show cause why he should not be held in civil contempt for the violations of this Court's order alleged in the Petition and committed to County Jail until he complies.

Plaintiffs shall personally serve each Defendant, except Michael Morris, and Larry Martin with this order and provide proof of service to this Court.

FAILURE TO APPEAR AS ORDERED BY THE COURT MAY RESULT IN A FINDING OF CONTEMPT AND A COURT ORDER FOR YOUR ARREST BY THE SHERIFF.

Entered: Kathleen M. Pantle
Judge Kathleen M. Pantle

Date: July 5, 2007

CERTIFICATE OF ATTORNEY

I certify that I am an attorney of record in the above cause and that the foregoing is a true and correct copy of the Order entered by the Court on the above date.

/s/ David R. Geerdes
Attorney

William T. Barker
Terrance A. Norton
David R. Geerdes
Sonnenschein Nath & Rosenthal LLP
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000
Firm No. 90784

SIXTH DIVISION
November 22, 2002

No. 1-01-3164, 1-02-1346 (consolidated)

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEACON CLARENCE BROWNLOW, DISTRICT ELDER CHESTER HUDSON, ELDER EUGENE PRICE and SISTER LONCIE MCCRAY, Plaintiffs-Appellants, v. BISHOP A.C. RICHARDS, MARCENIA J. RICHARDS, LELA WALKER, MARIE OLIVER, MICHAEL MORRIS and A.C. RICHARDS, JR. Defendants-Appellees.	Appeal from the Circuit Court of Cook County No. 01 CH 09038 Honorable John K. Madden, Judge Presiding

ROOSEVELT MARSAW, GEORGE GIBSON, LIVING WITNESSES OF THE APOSTOLIC FAITH, INC., and CLORD JORDAN, Plaintiffs-Appellants, v. MARCENIA J. RICHARDS, LELA WALKER, MARIE OLIVER, MICHAEL MORRIS, A.C. RICHARDS, JR., and BETHLEHEM HEALING TEMPLE CHURCH, INC., Defendants-Appellees.	Appeal from the Circuit Court of Cook County No. 01 CH 16442 Honorable Thomas P. Quinn, Judge Presiding

ORDER

The parties to this consolidated appeal are engaged in a bitter and prolonged battle over control of the Bethlehem Healing Temple Church in Chicago. For the reasons set forth below, we reverse and remand these two cases to the trial court.

This court recently issued an opinion in a related case in which we partially describe the basis for this appeal. *Brownlow v. Richards*, 328 Ill. App. 3d 833 (2002). However, in the interests of completeness and proper context, we begin our statement of the facts anew. Bethlehem Healing Temple Church, Inc., (Bethlehem) was incorporated in 1980 under the Illinois General Not For Profit Corporation Act (the

Act) (now 805 ILCS 105/101.01 *et seq.* (West 1987)). According to the original articles of incorporation, Bethlehem's incorporators and first board of directors included Charles Poole, who founded the Bethlehem Church in 1932, and Roosevelt Marsaw, among others. The articles, along with several pages of accompanying "special provisions," state that church directors were to be appointed annually at a meeting of church members held for that purpose on the second Tuesday in July.[1] Bethlehem's annual reports for 1981 to 1983 list Charles Poole as president and pastor. Annual reports filed from 1984 through 2001 list Bishop A.C. Richards as pastor.[2]

The cases in this consolidated appeal both arise from allegations that Richards altered the organization of Bethlehem's governance to transform the church into a "family business" and to ensure that his daughter, Marcenia Richards, would succeed him as pastor without interference.

---

[1] The special provisions refer to church members as members of the "corporation."

[2] Bethlehem's members also organized a national group called the Living Witnesses of the Apostolic Faith, Inc., (LWAF), a governing body for member churches. Filed in 1984, the LWAF articles of incorporation list Richards and Brownlow as two of the seven original directors. Richards was LWAF's presiding bishop until shortly before his death in August 2001, when Clord Jordan succeeded him.

The *Brownlow* litigation (Case No. 1-01-3164)

In June 2001, plaintiffs Clarence Brownlow, a deacon of Bethlehem, Chester Hudson, a district elder, Eugene Price, a church elder, and Loncie McCray, a minister of the church, (to whom we refer collectively as the *Brownlow* plaintiffs) filed an amended complaint against defendants Richards, Marcenia Richards and others. The complaint referred to the July 11, 2000, meeting of defendants during which defendants adopted a new constitution and bylaws (the 2000 constitution) giving Richards the power to appoint members of Bethlehem's board of directors and stating, *inter alia*, that regular meetings of the board "may be held without notice" at a time and place of Richards' determination. The *Brownlow* plaintiffs contended they did not receive notice of the July 2000 meeting and that, in conflict with Bethlehem's original constitution, the 2000 constitution vested in the newly formed board of directors the voting rights that were formerly held by church members.

Citing section 103.10(1) of the Act, the *Brownlow* plaintiffs asked the trial court to declare the 2000 constitution invalid as inconsistent with the special provisions. Plaintiffs requested a meeting in July 2001 for the election of directors and asked the trial court to order an accounting of church funds received and spent in the past 10 years and also asked the court to enjoin defendants from spending church funds.

According to the record, the amended complaint followed an April 2001 order of the trial court requiring Richards to call a general meeting for the adoption of bylaws and the election of officers and a new pastor before May 11, 2001. Also in April 2001, Richards filed an annual report that listed him as Bethlehem's president and listed the other defendants in this action as Bethlehem's secretary, treasurer and directors. The *Brownlow* plaintiffs later filed an amended annual report listing them as the board of directors and asking the state to "disregard any other filings."

In June 2001, Brownlow and other church members sought a temporary injunction barring A.C. Richards from disrupting religious services at Bethlehem and compelling the turnover of Bethlehem's bank records and an accounting of "all funds contributed by the membership and other sources to Bethlehem Healing Temple." After Richards' death in August 2001, Marcenia Richards succeeded her father as pastor under the 2000 constitution.

Defendants moved to dismiss the *Brownlow* plaintiffs' amended complaint pursuant to sections 2-619(a)(1) and (a)(9) of the Code or Civil Procedure (735 ILCS 5/2-619(a)(1), (a)(9) (West 2000)), arguing that the trial court lacked jurisdiction to resolve a religious dispute and that defendants were the rightful officers and board of "said corporation." The trial court granted defendants' motion to dismiss with prejudice, stating that the government should not interfere with religious affairs.

On appeal to this court, the *Brownlow* plaintiffs contend that this case involves the application of neutral principles of law, not a determination of religious doctrine. They ask this court to remand the case to the trial court for further proceedings.

The *Marsaw* litigation (Case No. 1-02-1346)

After the trial court dismissed the *Brownlow* litigation, several church members who were not involved in those proceedings brought an action against Bethlehem and the defendants in *Brownlow* requesting an election of a new board of directors under the procedure described in Bethlehem's original articles of incorporation. The plaintiffs included Marsaw, who was one of Bethlehem's original directors, Jordan, the LWAF presiding bishop, George Gibson, a member of Bethlehem, and LWAF (referred to herein as the *Marsaw* plaintiffs). This case was heard in the trial court by a different judge than the judge who ruled on the *Brownlow* litigation.

In the trial court, the *Marsaw* plaintiffs contended that Marsaw continued to be a director of Bethlehem because no valid election had been held since the original board of directors was chosen in 1980. Defendants moved to dismiss plaintiffs' complaint pursuant to sections 2-619(a)(3) and (a)(4), which allow dismissal if an action is already pending between "the same parties for the same cause" or is "barred by a previous judgment." In a four-page written order, the trial court stated that defendants

were correct that the *Brownlow* and *Marsaw* cases sought the same relief of stopping defendants from controlling Bethlehem. The court granted defendants' motion to dismiss the complaint and stayed its ruling pending the appeal of the *Brownlow* litigation, noting if that case was reversed and remanded, the *Marsaw* plaintiffs could join in the *Brownlow* action on remand. Alternatively, the court stated, if the dismissal of the Brownlow action is affirmed on appeal, the *Marsaw* litigation also should be dismissed.

On appeal, the *Marsaw* plaintiffs contend that the resolution of *Brownlow* would not bar their claim under *res judicata* or collateral estoppel and that their litigation is warranted by material changes in circumstances since this court decided *Brownlow*. They ask that this court reverse the stay of their case and remand for further proceedings or vacate the stay and remand the case for reconsideration under the proper *res judicata* analysis.

Analysis

We have consolidated the *Brownlow* and *Marsaw* appeals. Both actions were dismissed pursuant to section 2-619, and our review of such dismissals is *de nova*. *Benedict v. Federal Kemper Life Assurance Co.*, 325 Ill. App. 3d 820, 823, 759 N.E.2d 23, 26 (2001). A motion to dismiss under section 2-619 admits the legal sufficiency of the complaint and raises defects, defenses or other affirmative matters which appear on the face of the complaint or are established by

external submissions which act to defeat the claim. *LaSalle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 789, 758 N.E.2d 382, 389 (2001). This court must construe the allegations in the light most favorable to the plaintiffs and determine whether they have alleged sufficient facts to establish a cause of action and whether a genuine issue of material fact exists to preclude dismissal. *Benedict*, 325 Ill. App. 3d at 823, 759 N.E.2d at 26.

This court must determine whether it can consider the issues raised in both appeals. Although the First Amendment to the United States Constitution prevents civil courts from resolving church property disputes by examining matters of religious doctrine and practice, states have a legitimate interest in providing a forum for the peaceful resolution of internal church disputes, and civil courts have general authority to resolve controversies involving control or ownership of church property. *Jones v. Wolf*, 443 U.S. 595, 602, 61 L. Ed. 2d 775, 784, 99 S. Ct. 3020, 3025 (1979). A civil court may only determine, a church's polity if that determination can be made easily and without intrusive scrutiny. *Werling v. Grace Evangelical Lutheran Church of River Forest*, 139 Ill. App. 3d 496, 499, 487 N.E.2d 990, 992 (1985). A state is free to adopt an approach for settling church property disputes as long as that method does not involve consideration of a church's doctrine. *Jones*, 443 U.S. at 602, 61 L. Ed. 2d at 784, 99 S. Ct. at 3025.

In *Jones*, the Supreme Court expressly adopted the "neutral principles of law" approach, which allows a court to determine property ownership by applying general principles of property law and examining the local church charters and constitution, in addition to state statutes governing the holding of church property. *Jones*, 443 U.S. at 604, 61 L. Ed. 2d at 785, 99 S. Ct. at 3026. The court noted that the neutral principles method "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." *Jones*, 443 U.S. at 603, 61 L. Ed. 2d at 785, 99 S. Ct. at 3025. "If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Jones*, 443 U.S. at 604, 61 L. Ed. 2d at 785, 99 S. Ct. at 3026.

Since *Jones*, several Illinois courts have employed the neutral principles analysis with differing outcomes. See *Abrams v. Watchtower Bible and Tract Society of New York, Inc.*, 306. Ill. App. 3d 1006, 1011, 715 N.E.2d 798, 802 (1999) (complaint involved ecclesiastical principles and doctrines, thus precluding court's analysis); *People ex rel. Muhammad v. Muhammad-Rahmah*, 289 Ill. App. 3d 740, 744, 682 N.E.2d 336, 339 (1997) (in case involving *quo warranto* claim, appellate court held that trial court was not asked to interpret religious doctrine or rule on ecclesiastical question; appellate court remanded for trial court to utilize neutral principles approach in

interpreting corporate documents and applicable statutes); *Aglikin v. Kovacheff*, 163 Ill. App. 3d 426, 433, 516 N.E.2d 704, 709 (1987) (remanding to trial court for "findings of fact relevant to a 'neutral principles' analysis"); *Grace Evangelical Lutheran Church of River Forest v. Lutheran Church Missouri Synod*, 118 Ill. App. 3d 151, 156, 454 N.E.2d 1038, 1042 (1983) (court could not consider whether option contract may be exercised, since option provision was subject to whether certain religious precepts were taught).

The neutral principles theory can be applied to disagreements involving ownership of church property and those relating to control of the property. *Aglikin*, 163 Ill. App. 3d at 432, 516 N.E.2d at 708. Where a split exists among members of the local congregation, the court may objectively analyze the applicable statutes, common law, pertinent church charters, constitutions, bylaws and other evidence that would be relevant in a secular dispute to determine who has legal control over the corporation or voluntary association. *Jones*, 443 U.S. at 604, 61 L. Ed. 2d at 785, 99 S. Ct. at 3026. See also *Muhammad*, 289 Ill. App. 3d at 744, 682 N.E.2d at 339; *Aglikin*, 163 III. App. 3d at 431, 516 N.E.2d at 707. "In this manner the court determines who owns or controls church property in much the same manner that it would decide a secular property dispute." *Aglikin*, 163 Ill. App. 3d at 431, 516 N.E.2d at 707.

The *Brownlow* and *Marsaw* appeals involve a dispute over the control of Bethlehem. The *Brownlow*

plaintiffs contend that despite defendants' attempts to inject religious doctrine into plaintiffs' claims, this court must direct the trial court to analyze Bethlehem's articles of incorporation and the Act to determine the church's proper leadership, as it would for a nonreligious corporation. Plaintiffs argue that the articles vest control of Bethlehem's property in a board of directors elected by the church members and that the record does not support Richards' claims of ecclesiastical authority.

Defendants respond that this appeal necessarily involves an inquiry into Bethlehem's religious doctrine. They argue Bethlehem has always been under the hierarchical control of its pastor, who has "ecclesiastical control" over the church, and that Bethlehem's failure to observe corporate formalities requires this court to recognize the pastor as the church's sole authority.

After reviewing the substance of the *Brownlow* appeal, we agree with plaintiffs and conclude that the appeal does not ask this court to delve into religious ideology.[3] Therefore, we find that the trial court erred

---

[3] Defendants argue that Bethlehem observes a "hierarchical" model of governance, with the pastor serving as the sole decision maker, and that LWAF has no authority to determine the church's members. Plaintiffs respond that if this court finds the case involves religious doctrine, the court must defer to the highest LWAF authority and that although Richards, as presiding bishop, claims to be the LWAF leader, the record reflects a question of fact as to that point. However, because we can resolve the *Brownlow* plaintiffs' claims without examining

(Continued on following page)

in ruling that the resolution of Brownlow requires a consideration of religious doctrine. As stated in *Jones*, under the neutral principles of law analysis, a court can review statutes and common law, as well as pertinent church charters, constitutions, bylaws and other evidence, to determine which party has legal control over a church corporation. The controversy at bar involves the validity of Bethlehem's constitution and defendants' actions in creating a new constitution in 2000. Bethlehem was incorporated in 1980 under this state's General Not For Profit Corporation Act. Annual reports were filed with the state every year through 2001. According to the "special provisions" attached to the original articles of incorporation, members of the church were to meet on the second Tuesday of July to elect directors. The provisions also describe a method to determine the church members who would receive notice of that meeting and be allowed to vote. Those provisions refer to the church as a corporation.

Defendants adopted a new constitution in July 2000 giving Richards the sole power to appoint board members and dictate the time and place of board meetings. They argue that for 22 years, Bethlehem has ignored the formal procedures set out in the

---

religious doctrine, we need not address the hierarchy issue. See *Aglikin*, 163 Ill. App. 3d at 430, 516 N.E.2d at 707 ("[w]hen doctrinal or polity issues arise in the determination of a property dispute, the courts must defer to the resolution reached by the church's highest ecclesiastical authority.")

articles of incorporation and related provisions and contend that the history of the pastor's autonomous governance of the church had the effect of superseding the original articles of incorporation.

In light of these assertions, we remand *Brownlow* to the trial court for findings of fact necessary to a neutral principles analysis and a determination of whether plaintiffs or defendants should control Bethlehem. The court should determine whether the original constitution remains in effect or if the 2000 constitution was validly passed and supersedes the original constitution. A neutral principles analysis requires the court to consider the church's articles of incorporation, original constitution, bylaws and the previously discussed "special provisions," annual reports and minutes from annual meetings. In addition, the court should consider the provisions of the Act under which the church was incorporated.

Because we are remanding the *Brownlow* case for an analysis of the merits, we also reverse the trial court's granting of the *Marsaw* defendants' motion to dismiss the *Marsaw* plaintiffs' claims and also remand that case to the trial court for further consideration under the neutral principles test. Because the central issue in *Marsaw* also involves the validity of the current directors of Bethlehem, it would serve the interests of judicial economy and finality if *Brownlow* and *Marsaw* were consolidated upon remand and the claims in those cases were heard in the same proceeding.

Accordingly, the rulings of the trial courts in case no. 1-01-3164 and in case no. 1-02-1346 are reversed and remanded for further proceedings consistent with this order.

Reversed and remanded.

GALLAGHER, J. with O'BRIEN, P.J. and O'MARA FROSSARD, J. concurring.